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COMMISSION ON THE STATUS OF WOMEN
Forty-second session
Open-ended Working Group on the
Elaboration of a Draft Optional
Protocol to the Convention on
the Elimination of All Forms of
Discrimination against Women
2-13 March 1998
Agenda item 5

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, INCLUDING THE ELABORATION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION

Draft report of the Open-ended Working Group

Chairperson: Ms. Aloisia WÖRGETTER (Austria)

1. In accordance with Economic and Social Council resolution 1995/29 of 24 July 1995, the Open-ended Working Group on the Elaboration of a Draft Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women met as an in-session open-ended working group of the Commission at its fortieth session. By its decisions 1996/240 of 22 July 1996 and 1997/227 of 21 July 1997, the Council renewed the mandate of the Working Group so that it might continue its work, and authorized it to meet in parallel with the Commission at its forty-first and forty-second sessions.

2. Ms. Aloisia Wörgetter (Austria) continued to serve as Chairperson of the Working Group.

3. The Working Group met from 2 to ___ March 1998. It held ___ meetings (1st to ___) and a number of informal meetings. It had before it the following documents:

(a) Report of the Secretary-General on the annotated comparison of the draft optional protocol and the amendments proposed thereto with the provisions of existing international human rights instruments (E/CN.6/1998/7);

(b) Note by the Secretary-General on the results of the eighteenth session of the Committee on the Elimination of Discrimination against Women (E/CN.6/1998/CRP.1).

4. At the 1st meeting, on 2 March 1998, the Chairperson opened the meeting and made a statement.

5. At the same meeting, the Special Adviser to the Secretary-General on Gender Issues and Director of the Division for the Advancement of Women made an introductory statement.

6. Also at the same meeting, a statement was made by the Minister of the Department for Women's Affairs of Chile.

7. At the 3rd meeting, on 4 March 1998, statements were made by the State Secretary, Ministry of Foreign Affairs of Norway, and by the Federal Minister for Women's Affairs and Consumer Protection of Austria.

General exchange of views

8. At its 1st meeting, on 2 March 1998, the Working Group, at the invitation of the Chairperson, held a general exchange of views on item 5.

9. Delegations recalled that the conclusion of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women was a commitment of both the 1993 Vienna World Conference on Human Rights and the 1995 Fourth World Conference on Women. They noted that 1998 was the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights and marked five years since Governments had adopted the Vienna Declaration and Programme of Action. They pointed out that the adoption of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women would make 1998 the year of women's human rights, thereby giving real meaning to the anniversary.

10. Delegations stressed the importance of concluding a strong protocol that would take account of the difficulties that women faced in accessing legal remedies for violations of their human rights but at the same time would build on existing and widely accepted principles. The importance of concluding a strong, well-drafted text that could be widely accepted was emphasized.

11. Several delegations suggested that standing requirements should be broad, and it was also suggested that although the protocol should be based on other instruments, it should contribute to the progressive development of international law. Accordingly, it was suggested that specific provisions relating to interim measures and follow-up should be included in the text. A number of delegations stressed the usefulness of an investigations procedure.

12. Several delegations were of the view that it was vital not to allow reservations to the protocol.

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Revised draft optional protocol submitted by the Chairperson on the basis of the compilation text contained in the report of the Commission on the Status of Women on its forty-first session (E/1997/27) and proposals made by the Commission at its forty-second session

[The States Parties to this Protocol,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of women and men,

Noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Recalling that the international covenants on human rights and other international human rights instruments prohibit discrimination on the basis of sex,

Recalling also the Convention on the Elimination of All Forms of Discrimination against Women, in which States Parties condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

Reaffirming their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms,

[Recalling also that the Vienna Declaration and Programme of Action reaffirms that all human rights are universal, indivisible, interdependent and interrelated,]

[Recalling that the Vienna Declaration and Programme of Action calls for the introduction of a right to petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women,]

[Recalling also that the Beijing Platform for Action urges that such a protocol enter into force as soon as possible,]

Have agreed as follows:

Article 1

[A State Party to the present Protocol recognizes the competence of the Committee to receive and consider communications [submitted in accordance with article 2].]

Article 2

[Communications may be submitted by [or on behalf of] individuals or groups [of individuals] under the jurisdiction of a State Party claiming to be victims of a violation of any of the [rights] [provisions] set forth in the Convention [through an act or failure to act] by that State Party.]

[Communications may be submitted by an individual or groups of individuals, or on their behalf, by their designated representatives, subject to the jurisdiction of a State Party, claiming to be victims of violations of any of the rights set forth in the Convention.]

Article 3

Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to this Protocol.

Article 4

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless [it is demonstrated that] the application of such remedies is unreasonably prolonged or unlikely to bring effective relief [as determined in accordance with generally recognized rules of international law].

2. The Committee shall declare a communication inadmissible where [, in the view of the Committee]:

(i) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(ii) It is incompatible with the provisions of the Convention;

(iii) It is manifestly ill-founded or not sufficiently substantiated;

(iv) It is vexatious or otherwise an abuse of the right to submit a communication;

(v) The facts that are the subject of the communication occurred prior to the entry into force of this Protocol for the State Party concerned unless those facts continued after that date.

Article 5

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its [urgent] consideration a request that the State Party take interim measures as may be necessary to avoid possible irreparable damage [to the victim or victims of the alleged violation].

2. Where the Committee exercises its discretion under paragraph 1, this does not imply a determination on admissibility or on the merits of the communication.

Article 6

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity or identities, the Committee shall bring any communication submitted to it under this Protocol [confidentially] to the attention of the State Party concerned.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State Party.

[3. During its examination of a communication, the Committee shall place itself at the disposal of the parties concerned with a view to facilitating settlement of the matter on the basis of respect of the rights and obligations set forth in the Convention]. [In the event of agreement between the parties, the Committee shall adopt findings taking note of the settlement of the matter].

Article 7

[1. While exercising its function under this Protocol, the Committee should be in compliance with the principles of objectivity and impartiality.]

1. The Committee shall consider communications received under this Protocol in the light of all [[written] [or recorded]] information made available to it by [or on behalf of] the [author] [individual] and by the State Party concerned. [The Committee may also take into account information obtained from other [United Nations] sources provided that this information is transmitted to the author and the State Party for comment.]

2. The Committee shall hold closed meetings when examining communications under this Protocol.

[2 bis. When a communication is being considered, the State Party concerned shall be entitled to take part in the proceedings of the Committee and to make submissions orally and/or in writing.]

3. After examining a communication, the Committee shall transmit its views on the communication, together with recommendations, if any, to the State Party and the individual or individuals concerned.

4. The State Party shall give [due] consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, [as far as possible] within six months, a written response, including on any action taken in the light of the views and recommendations of the Committee.

5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention.

Article 10

[1. If the Committee receives reliable information indicating a serious [and] [or] systematic violation by a State Party to the Protocol of rights set forth in the Convention [or of a failure to give effect to obligations set forth in the Convention], the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry [with the consent of the State Party] and to report urgently to the Committee. [[Where warranted and] [in agreement with] [with the consent of] the State Party, the inquiry may include a visit to its territory.]

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party shall, within [three] [six] months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the [consent and] cooperation of the State Party shall be sought at all stages of the proceedings.]

Article 11

[1. The Committee may at [any] [an appropriate] time invite a State Party concerned to discuss with it the measures that that State Party has taken in response to such an inquiry.

[2. The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to such an inquiry].]

Article 11 bis

1. Each State Party may, at the time of signature or ratification of this Protocol or accession thereto, declare that it [does not] recognize the competence of the Committee provided for in articles 10 and 11.

2. Any State Party having made a declaration in accordance with paragraph 1 of this article may, at any time, withdraw this declaration by notification to the Secretary-General.]

Article 12

[States Parties to this Protocol undertake:

[(a) To respect the [right] [procedure] provided by this Protocol to submit communications or information to the Committee and to cooperate with the Committee at all stages of its proceedings under this Protocol;]

[(b) To take all appropriate steps to protect [all persons] [those] under its jurisdiction submitting communications or information] [or those the subject

of such information/communications,] to the Committee from interference or reprisal by any party.]]

Article 13

The Committee shall include in its annual report under article 21 of the Convention a summary of its activities under this Protocol.

Article 14

Each State Party to this Protocol undertakes to make [widely] known and to give [due] publicity to the Convention and its Optional Protocol and to facilitate access to the views and recommendations of the Committee, in particular, in matters involving that State Party.

Article 15

The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by this Protocol.

Article 16

[The Committee shall meet for such a period as is necessary [within its agenda] to carry out its function under this Protocol.]

Alternative

[The Committee shall hold meetings to exercise its functions under this Protocol, in addition to its meetings held under article 20 of the Convention. The duration of such meetings shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the Protocol, subject to the approval of the General Assembly.]

New resources paragraph

[The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Protocol.]

Article 17

1. This Protocol shall be open for signature by any State that has signed, acceded to or ratified the Convention.

2. This Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 18

1. This Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the [fifth] [tenth] [twentieth] instrument of ratification or accession.

2. For each State ratifying this Protocol or acceding to it after its entry into force, this Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 20

[No reservations to this Protocol shall be permitted.]

Alternative

[Reservations to this Protocol shall be permitted, unless such a reservation is incompatible with the object and purpose of the present Protocol and the Convention, in accordance with the rules of international law.]

Article 21

1. Any State Party to the present Protocol may propose any amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to this Protocol with a request that they notify her/him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to this Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of this Protocol and any earlier amendments that they have accepted.

Article 22

1. Any State Party can denounce this Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciations shall be without prejudice to the continued application of the provisions of this Protocol to any communication or inquiry before the effective date of denunciation.

Article 23

The Secretary-General of the United Nations shall inform all States of:

(a) Signatures, ratifications and accessions under this Protocol;

(b) The date of entry into force of this Protocol and the date of entry into force of any amendment under article 21 and any denunciations under article 22.

Article 24

1. This Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Protocol to all States referred to in article 25 of the Convention.

* * *

Note: The articles following article 7 will be renumbered sequentially in the text of the protocol that will appear in the final report of the Commission on the Status of Women at its forty-second session.

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Chairperson's summary

Preamble

1. The Working Group agreed that the optional protocol would be preceded by a short, succinct preamble which reflected the international human rights framework of the United Nations. Delegations agreed that the preamble would note that the Charter of the United Nations and the Universal Declaration of Human Rights establish the principles of equality between men and women and the entitlement of all, without distinction based on sex and other grounds, to human rights. Delegations agreed that the preamble would recall the international covenants and other human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women. It would reaffirm States parties' determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms. Some delegations suggested that the preamble should also recall that the Vienna Declaration and Programme of Action reaffirmed the universality, indivisibility and interrelatedness of all human rights and called for the introduction of the right of petition through the preparation of an optional protocol to the Convention. Some delegations also suggested that the preamble should make reference to the Beijing Platform for Action. Others suggested that these documents be addressed in a resolution.

Article 3

2. Delegations recalled that article 3 of the draft protocol had been agreed by the working group ad referendum. Noting that article 1 of the first draft optional protocol had explicitly precluded reception of communications relating to States parties to the Covenant that were not States parties to the protocol, delegations agreed to the addition of this formula in article 3 ad referendum.

Article 12

3. Some delegations were of the view that article 12 of the protocol was not required because States parties to the protocol would be obliged to ensure that its procedures were accessible and to cooperate with the Committee and because the texts of existing international procedures did not include a similar provision.

4. Many delegations were of the view that an article emphasizing States' obligations in this regard was desirable, but that this article should be put in positive terms. Several delegations suggested that the State party be called on to cooperate in the effective exercise of the right to submit communications or information to the Committee. Others suggested that this right be facilitated, promoted or supported. A number of delegations were of the view that it was undesirable to refer to the protocol as creating rights and it was preferable to provide that States parties would respect the procedure provided by the protocol.

5. Many delegations suggested that the protocol should provide that the State would cooperate with the Committee at all stages of its proceedings under the protocol, but noted that this obligation would be implied in the absence of such a provision.

6. Some delegations suggested that the protocol should explicitly provide that States parties would undertake to take appropriate steps to protect those using the protocol from interference and reprisal.

Article 13

7. Delegations recalled that article 13 had been adopted ad referendum.

Article 14

8. Many delegations stressed the importance of wide knowledge of and publicity for the protocol, its procedures and the conclusions of the Committee in this context. Several noted the importance of ensuring wide dissemination of the jurisprudence of the Committee. Several noted that provisions relating to knowledge of and publicity for treaties were not included in existing instruments providing communications procedures, while others noted that article 42 of the Convention on the Rights of the Child made such provision, as did the Human Rights Committee's rules of procedure.

9. A number of delegations expressed the view that a simple formulation relating to publicity would be appropriate and that this should address the protocol and the Convention. Many delegations agreed that it was important for women to be aware of the Convention and the protocol, but cautioned against a provision that would involve onerous obligations, including of a financial nature, for States parties.

Article 15

10. One delegation noted that in light of article 17 of the Convention on the Elimination of All Forms of Discrimination against Women, article 15 of the protocol was redundant. Many delegations expressed the view that a specific reference to the Committee's powers with regard to rules of procedure should be included in the protocol for the purposes of clarity. Delegations adopted the article ad referendum.

Article 17

11. Delegations adopted article 17 of the draft protocol ad referendum.

Article 18

12. While several delegations expressed the view that the optional protocol should enter into force after the fifth instrument of ratification or accession was lodged with the Secretary-General, they were willing to join the many delegations who favoured entry into force after 10 ratifications or accessions. A number of delegations, arguing for consistency with the threshold established in the Convention, were of the view that 20 should be required.

Article 19

13. Several delegations noted that this provision was a restatement of article 29 of the Vienna Convention on the Law of Treaties and suggested its retention. A number of delegations noted that an equivalent provision was not to be found in the Convention on the Elimination of All Forms of Discrimination against Women. Delegations agreed to delete this article from the protocol.